

§ 230.43

36 CFR Ch. II (7–1–03 Edition)

of practice implementation, and the Federal share of the total cost shall be reduced by any gross revenue from any material sold as a result of the cost-share practice.

(i) States may use the cost-share rate to define priority practices and priority areas by reserving the maximum rate of 75 percent of the total costs for the practices and areas having the highest priority.

(j) State priorities for cost-share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310.

(k) Other priorities may be developed by the State Forester in consultation with the State Forest Stewardship Coordinating Committee.

(l) A landowner may receive partial payment, if allowed in the State priority plan, for completed components on the condition that the landowner agrees to complete the remaining components of the practice within the performance period specified in the practice plan.

(m) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester may approve cost-share payments under one of the following conditions:

(1) The landowner repeats application of practices previously implemented or establishes additional eligible practices under such terms and conditions as the service representative may require, in which case the State Forester may approve cost-share payments for additional or repeated practices to the extent such measures are needed to meet the objectives of the management plan; or

(2) The landowner establishes, to the satisfaction of the service representative that:

(i) A reasonable effort was made to meet the minimum requirements; and

(ii) The practice, as performed, adequately meets the objectives of the practice plan.

(n) In case of death or incompetence of any landowner, the State Forester shall approve cost-share payments to the successor in title or other persons or entities in control of the landowner property if they agree to maintain the

practices for the duration of the required maintenance period.

(o) Any landowner who may be entitled to a cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

(1) Payments may be assigned only for performance of a FLEP practice;

(2) A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt; and

(3) Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on their behalf, if payment is made to an assignor rather than to an assignee or if payment is made to only one of several assignees.

(p) No financial assistance or portion thereof due and owing to any landowner shall be subject to any claim arising under State or other law by any creditor, except for claims of agencies of the United States Government.

(q) Prior to receiving approval to implement any FLEP practice identified in the State priority plan, except for management plan development, eligible landowners shall have an approved practice plan providing appropriate technical standards concerning the performance of the requested practice(s). A service representative shall approve the plan. In reviewing and approving plans, to the extent deemed applicable by the service representative, existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet, the practice plan requirements under FLEP.

§ 230.43 Cost-share assistance—prohibited practices.

(a) Cost-share payments for the following are prohibited:

(1) Costs incurred before an application for cost-share is approved in writing, except:

(i) As pre-approved by the State Forester, or

(ii) The materials and items that may be purchased before approval of the practice as described in the State priority plan;

Forest Service, USDA

§ 230.45

(2) Repeated practices on the same site within the required maintenance period which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner or recurring practices as noted in this subpart;

(3) Capital investments or capital improvements not related to FLEP practices, purchase of land or any interest in land, or any interest in an endowment as provided in section 230.32(k) and (l);

(4) Practices associated with the development of or improvement to landowner nursery operations;

(5) Practices associated with the development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance; or

(6) Any practice that is not related to the long-term sustainability of non-industrial private forest lands or agroforestry activities.

§ 230.44 Cost-share assistance—reporting requirement.

(a) FLEP cost-share accomplishments should be reported using the following standard categories of practices:

(1) FLEP1—Management Plan Development;

(2) FLEP2—Afforestation and Reforestation;

(3) FLEP3—Forest Stand Improvement;

(4) FLEP4—Agroforestry Implementation;

(5) FLEP5—Water Quality Improvement and Watershed Protection;

(6) FLEP6—Fish and Wildlife Habitat Improvement;

(7) FLEP7—Forest Health and Protection;

(8) FLEP8—Invasive Species Control;

(9) FLEP9—Fire and Catastrophic Risk Reduction;

(10) FLEP10—Fire and Catastrophic Event Rehabilitation; and

(11) FLEP11—Special Practices.

(b) All reporting must include activities and accomplishments for each category of FLEP practices.

§ 230.45 Recapture of cost-share assistance.

(a) Payments made to landowners may be recaptured under one or more of the following circumstances:

(1) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from FLEP. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of FLEP. Financial assistance payments shall be withheld or a refund of all or part of any FLEP payments otherwise due or paid to that person shall be secured.

(2) If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice. Cost-share payments shall be withheld or a recapture of all or part of any FLEP payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.

(3) If a landowner sells, conveys, or otherwise loses control of the land, except when determined by a State Forester to have been beyond the landowner's control, upon which there is a continuing obligation to maintain a practice, and the new landowner does not agree to assume the responsibility for maintaining the practice. In such cases the landowner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices.

(b) Nothing in this section requiring the withholding or refunding of financial assistance payments shall preclude any penalty or liability otherwise imposed by law.

(c) Any landowner, successor, or assignee who is dissatisfied with any determination made under FLEP may request reconsideration by the State Forester and, if the matter is not resolved, by the Responsible Official. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for the request. All decisions on reconsideration must be issued in writing.